

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CURTIS A MABBITT
Claimant

CHRISTIAN OPPORTUNITY CENTER
Employer

APPEAL 18A-UI-10628-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/30/18
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Admin Code r. 871-24.35 – Date of Submission

STATEMENT OF THE CASE:

Christian Opportunity Center, Employer, filed an appeal from the October 23, 2018 (reference 03) unemployment insurance decision that found the protest untimely and determined that the claimant, Curtis Mabbitt, was eligible for unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 8, 2018 at 9:00 a.m. Claimant participated. Employer participated through Bre Brooks, Human Resources Director. Department's Exhibits D1 and D2 were admitted.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to Christian Opportunity Center on October 3, 2018. (Exhibit D1) The notice lists a due date of October 15, 2018. (Exhibit D1) The employer received the notice on or before October 11, 2018. (Brooks Testimony) The employer completed and signed the protest on October 11, 2018. (Exhibit D1; Brooks Testimony) The employer placed the protest in the drive-up box at the Pella, Iowa post office at 4:45p.m. on October 11, 2018. (Brooks Testimony) The exact date of the postmark on the envelope in which the protest was received by Iowa Workforce Development is illegible. (Exhibit D2) The envelope does not have a postage meter mark. (Exhibit D2) The protest was received by Iowa Workforce Development on October 19, 2018. (Exhibit D1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's protest was timely. The matter is remanded for a fact-finding interview and unemployment insurance decision.

Iowa Code section 96.6(2) provides:

2. Initial Determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to *delay or other action of the United States postal service.* (emphasis added)

The employer's protest is considered received by and filed with Iowa Workforce Development on the date entered on the document as the date of completion, because the postmark is illegible and there is no postage meter mark. The date entered on the protest as the date of completion is October 11, 2018. The employer's representative credibly testified that the protest was placed in the mail on October 11, 2018. Any delay in receipt of the protest by Iowa Workforce Development was due to delay or other action of the United States postal service. The employer's protest is deemed received by and filed with Iowa Workforce Development on October 11, 2018; therefore, the employer's protest is timely.

DECISION:

The October 23, 2018 (reference 03) unemployment insurance decision is reversed. The employer filed a timely protest.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment decision.

Adrienne C. Williamson
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

acw/rvs